

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**DYSON TECHNOLOGY LIMITED
and DYSON, INC.,
Plaintiffs,
v.**

**MAYTAG CORPORATION,
Defendant.**

)
)
)
) **Civil Action No. 05-434-GMS**
)

) **REDACTED FOR PUBLIC FILING**
)
)

**DEFENDANT HOOVER, INC.'S REPLY IN SUPPORT OF ITS MOTION *IN LIMINE*
TO BAR EVIDENCE FROM EXPERT WITNESS LAURA STAMM AND ANY OTHER
DYSON WITNESS CONCERNING LEGAL CONCLUSIONS AND TRANSFER
PRICING ARRANGEMENTS**

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In further support of its Motion for an order excluding any legal opinion evidence from Dyson's expert witness Laura Stamm, and any evidence, offered by Ms. Stamm or anyone else from Dyson, regarding transfer pricing arrangements, Hoover states as follows:

I. FACTS AND ARGUMENT

A. Dyson's Concessions Regarding Laura Stamm's Opinion Support Granting Hoover's Motion

B. Dyson's Argument Regarding Transfer Pricing Again Misses The Point

The fact of the matter is that inter-company payments are not *bona fide* expenses and must be excluded when calculating profits under *Banjo Buddies v. Renosky*, 399 F.3d 168, 178 (3d Cir. 2005).

Dyson's effort to distinguish *Banjo Buddies* is misguided. Although the cost item at issue in *Banjo Buddies* was a distribution to shareholders, the defendant's books and records treated it "as an expense for bookkeeping purposes." 399 F.3d at 178. The Court held that, regardless of the accounting characterization, it was "a method of disbursing income" and, thus, not a business expense that could be deducted from a Lanham Act profits award. *Id.*

Lower courts and other circuit courts have similarly held that only actual expenses incurred in generating the unlawful sale may be deducted from revenues to determine profits. *W.R. Grace & Co. v. InterCat, Inc.*, 60 F.Supp. 2d 316, 322 (D. Del. 1999) (“fixed costs—those costs which do not vary with increases in production, such as management salaries, property taxes, and insurance—are excluded when determining profits”); *Larsen v. Terk Techs Corp.* 151 F.3d 140, 150 (4th Cir. 1998) (calculating lost profits as gross income minus cost of goods sold); *Taylor v. Meirick*, 712 F.2d 1112, 1121 (7th Cir. 1983) (only overhead costs that were variable should be taken into account in determining lost profits; costs that would be incurred anyway should not be subtracted, because by definition they cannot be avoided by curtailing the profit making activity). Thus, even real costs are ignored if they were not necessarily incurred due to the challenged sales.

WHEREFORE, for the reasons stated herein, Hoover respectfully requests that this Court grant Hoover’s Motion *in Limine*.

HOOVER, INC.

Dated: April 26, 2007

Respectfully submitted,

/s/ Francis DiGiovanni

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EXHIBITS A-C
HAVE BEEN REDACTED

CERTIFICATE OF SERVICE

I, Francis DiGiovanni, hereby certify that on April 26, 2007, copies of the foregoing document were served on the following counsel of record in the manner indicated:

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